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Testimony of Attorney Vicki Hutchinson
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Raised Bill No. 5170
An Act Concerning Students' Right to Privacy in Their Mobile Electronic Devices
Education Committee Public Hearing – February 26, 2018

The Connecticut Criminal Defense Lawyers Association is a not-for-profit organization of more than three hundred forty-five lawyers who are dedicated to defending persons accused of criminal offenses. Founded in 1988, CCDLA is the only statewide criminal defense lawyers' association in Connecticut. An affiliate of the National Association of Criminal Defense Lawyers, CCDLA works to improve the criminal justice system by insuring that the individual rights guaranteed by the Connection and United States constitutions are applied fairly and equally and that those rights are not diminished.

CCDLA opposes Raised Bill No. 5170. Raised Bill 5170 is a proposed new Connecticut General Statute which would permit any school employee as defined by subsection (2) of the proposed legislation to take possession of a student's mobile electronic device if the device is located on the grounds of a public elementary, middle or high school if the school employee has a reasonable suspicion the student has violated or is violating an educational policy and that the device contains evidence of the suspected violation or that the student poses a risk of imminent personal harm to such student or others. The bill would further permit a school administrator to conduct a search of the student's mobile electronic device, limited the search to finding evidence of the suspected policy violation or to prevent imminent personal injury.

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As written, the proposed statute is vague, confusing and overly broad and violates the state and federal constitutional protections against warrantless searches.

The definition of “school employee” as provided in section (2)(A) of the bill could include a crossing guard, a cafeteria worker or even a parent volunteer and does not require that the individual being defined as a school employee actually be acting in that capacity at the time the individuals acts pursuant to this statute. Section (2)(b) refers to school property without any further definition or clarification. This could include devices left in a parked car in the school parking lot or in a parent’s car when the student is being dropped off or picked up from school, bleachers at the football field, grassy picnic areas surrounding the school, playgrounds and other areas surrounding the school. The legislation as proposed does not limit removal of the device from the student owner of the device and is vague enough to enable a device to be taken from a parent, grandparent, therapist or any other adult who may have possession of a student’s mobile electronic device while on school property.

The proposed legislation would allow seizure of the mobile electronic devices upon suspicion that a student has violated an educational policy, but does not define educational policy nor limit the time period within which such educational policy might have been violated. As drafted this would allow seizure of a device in the event of suspicion of cheating on a test, plagiarizing a paper or even forging an excuse for tardiness or missing school, all of which could be construed to be violative of an

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educational policy. Such violation could have occurred hours, days, weeks, or even months earlier as there is no time limit in the proposed legislation.

The proposed legislation would further authorize a school administrator to conduct a search of the seized device without obtaining any type of search warrant. There is no definition of school administrator within the proposed legislation and no time period within which the device must be searched before returning the item to the student or the student's parents. Nor are there any guidelines pertaining to the actual search, such as whether the search must be videotaped or witnessed by another individual or witnessed by the student and/or the student's parents or guardians.

Although the state and constitutional protections against warrantless searches are somewhat limited when applied to actions taken at K-12 schools due to the special role schools and their staff play vis-à-vis the students, the protections have not been eliminated completely. It is important to note this proposed legislation would permit taking an item of personal belonging directly from the student which must be differentiated from taking an item of personal belonging from a school locker, the locker being the property of the school. A student has a reasonable expectation of privacy in his or her personal articles, even when brought onto school grounds. In the case of *New Jersey v. T.L.O*. 469 U. S. 325 (1985) the United States Supreme Court held that seizure of a student's cell phone must be reasonable and the ensuing search must be reasonable to the circumstances under which the cell phone was seized initially.

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The language of Raised Bill 5170 does not provide sufficient clarity as to what reasonable suspicion is as applicable to this bill or of the nexus between reasonable suspicion and alleged violation of any educational policy that would justify a warrantless seizure or search. Reasonable suspicion is not the same as probable cause to believe a crime has been committed or an educational policy violated.

The bill as proposed does not require any attempts be made to obtain a warrant before searching the device or any necessity that there be imminent harm or exigent circumstances to justify searching the device without a warrant. The legislation as drafted violates both the state and federal constitutional guarantees against unreasonable seizure and searches without providing any justification or need for such violation and without providing any clearly delineated procedures and practices to be implemented in connection with the seizures and searches.

For these reasons CCDLA respectfully opposes Raised Bill 5170 and requests the Committee take no action on this bill.

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